IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2212 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JIGNESH @ JIGO @ JIGAR S/O. HIMATBHAI GOHIL
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MRS NASRIN N SHAIKH for Petitioner.
MS NISHA PARIKH, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 08/08/2007

ORAL JUDGMENT

1. The petitioner-detenue, aged 20, has approached this Court under Article 226 of the Constitution for a direction of his release from preventive detention by setting aside order dated 3-1-2007 of Police Commissioner, Ahmedabad, made under the provisions of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short

"PASA"). According to the grounds of detention furnished to the petitioner under Section 9 of the Act, the petitioner is cruel by nature and always keeps weapons in his possession and indulges in anti-social activity of committing theft of two wheelers whereby feeling of insecurity was generated among common people. It is stated that three offences punishable under Sections 379 and 114 of the Indian Penal Code were registered against the petitioner in three different police stations of Ahmedabad within a short span of September 2005 to December 2006. The detaining authority is stated to have considered number of documents and circumstances including statements of two witnesses, whose names were not disclosed, for arriving at the conclusion that the petitioner was a "dangerous person" within the meaning and definition of Section 2 (c) of PASA. Thereafter, having been subjectively satisfied about the petitioner being a "dangerous person", who, by his activity, was adversely affecting public order, with a view to preventing him from acting in that manner, the impugned order is stated to have been made.

2. By filing affidavit-in-reply of the detaining authority, it is stated on oath as under:

> "5. ..... I say that on receipt of the proposal along with the materials from the sponsoring authority for detention of the detenue, I have carefully scrutinized, examined and considered all those materials and also personally verified the genuineness, correctness and veracity of the incidents narrated in the statements of witnesses in the unregistered cases by calling the said witnesses to my office and I found the said facts to be genuine and believable. Thereafter, on the basis of the above materials, I have formulated the grounds of detention and all those grounds are true, correct, clear and proper. ..... Therefore, on carefully scrutinizing, studying, examining and considering the materials placed before me including the papers pertaining to the above cases and statements of witnesses and after applying my mind to the facts of the case, I came to the conclusion after

> subjectively satisfying myself that the detenue is a head-strong and dangerous-person and his anti-social and criminal activities are directly or indirectly causing and are likely to cause harm, danger and alarm of insecurity among the general public or section thereof and he is thus disturbing the public order and public peace and there is also grave or wide-spread danger to life and property. Therefore, with a view to immediately prevent him from continuing his anti-social and criminal activities in any manner prejudicial to the maintenance of public order, after satisfying that such activities of the detenue cannot be curbed or prevented immediately by resorting to action under the ordinary law, as a preventive measure, I have passed the order of detention against the detenue with full application of mind and in compliance and in consonance with the provisions of the PASA Act as well as the Constitution of India and the said order is legal, valid and proper. ....."

3. Learned counsel, Ms.N.N.Shaikh, appearing for the petitioner, pointed out from the material on record that the statements of two witnesses, whose identity was not disclosed, did not inspire any confidence as they are stated to have been recorded immediately before the impugned order and after the petitioner was released on bail. It was submitted that the petitioner was not stated to have any previous record of any offence registered against his name and even assuming his involvement in three offences of theft, they were stray incidents and, at the worst, infraction of law and order. She submitted that the petitioner was not a "dangerous person" under Section 2 (c) of PASA since he cannot be stated to have habitually committed any offence as contemplated in the definition and he could not be deemed to be acting in any manner which was likely to adversely affect the maintenance of "public order". Learned counsel relied upon judgment of the Supreme Court in **M.J.Shaikh Vs. M.M.Mehta [1995 (2) GLR 1268]** to submit that the word "habitually" was to mean constant, customary and addicted to specified habit and the term habitual criminal could be applied to anyone who has been previously convicted of a crime to

sentence and committed to prison more than twice. The word 'habitually' means usually and generally. It did not refer to frequency of the occasions but to invariability of practice and habit has to be proved by totality of facts. In **Vijay Narain Singh v. State of Bihar [1984 (3) SCC 14]**, the Supreme Court has interpreted the expression "habitually" to mean 'repeatedly' or 'persistently' and observed that it implies a thread of continuity stringing together similar repetitive acts but not isolated, individual, and dissimilar acts and that repeated, persistent and similar acts are necessary to justify an inference of habit. Learned counsel also relied upon judgment of the Supreme Court in **Commissioner of Police and Others v. C.Anita [(2004) 7 SCC 467]**, wherein it is observed that, stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder.

4. Learned AGP, Ms.Nisha Parikh, submitted that, in the facts of the present case, three successive similar cases of theft of Hero Honda motor-cycles indicated tendency of the petitioner to habitually commit the same offence and the detaining authority was justified in arriving at the conclusion that the petitioner was a "dangerous person" and was required to be prevented from acting in a manner prejudicial to the maintenance of "public order". She further submitted that the activities of the petitioner were likely to cause danger and feeling of insecurity among general public and the subjective satisfaction of the detaining authority was duly recorded in the impugned order. Learned AGP relied upon judgment of this Court in **Aslam Sattar Memon v. State of Gujarat [2000 (1) GCD 92 (Guj)]**, wherein the alleged offences were committed in quick succession, one after the other, and in the same manner and the petitioner therein was robbing the passers-by and

threatening them with lethal weapon and dispersing the crowd by brandishing a long knife, leaving no doubt about his activities being detrimental to the maintenance of public order. Besides that, on two occasions, even shops in the locality had had to be closed down immediately. Learned AGP also relied upon the judgment of this Court in **Mahesh Mansukhbhai Solanki v. State of Gujarat [2002 (4) GCD 2817 (Guj)]**, wherein it was observed as under:

> "7. ..... When the offence of theft is robbery, the gravity would be lesser than the case when extortion is found robbery. When a person is found involved in similar type of offence in the same area of the city and is found in the habit of committing offence in between particular hours of the day and has been enlarged on bail by the Court, then with a view to prevent him from committing similar types of offences and on account of some undisclosed offence, if the detaining authority records a finding that he is required to be detained being "dangerous person" in relation to his activities as a habitual thief or robberer, than it would be difficult for this Court to conclude that the subjective satisfaction recorded by the detaining authority is bad in law or in any way violative of Article 22(5) of the Constitution of India."

5. Preventive detention of the petitioner, in the facts of the present case, appears to be based upon record of three cases registered against him and the statements of two witnesses, whose names were not disclosed. Out of three cases registered against him, first one is registered on 20th September 2005, second is registered on 24th October 2006 and the third one is registered on 1st December 2006. Thus, the argument of learned AGP that the offences were committed in a sequence in quick succession is not correct. Applying the ratio of Vijay Narain Singh (supra), registration of three cases does not indicate a thread of continuity stringing together similar repetitive acts and if the cases are considered to be isolated or individual, it may not justify inference of habit. Besides that, as held by the Supreme Court in Police

Commissioner v. C. Anita (supra), stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Even deeming provision under sub-section (4) of Section 3 would not be available to the detaining authority for presuming that the alleged activities of the petitioner were likely to adversely affect public order since the alleged activities could, by no stretch, be assumed to be causing or likely to cause any harm or alarm or feeling of insecurity among the general public or any section thereof.

6. Therefore, the impugned order clearly appears to have been made without proper application of mind and was not sustainable in the eye of law. Therefore, the petition is allowed and the impugned order dated 3-1-2007 is set aside with the direction that the petitioner shall be set at liberty forthwith, if not required to be detained in connection with any other proceeding. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(D.H.Waghela, J.)

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